

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

CELA

AUDIT REFERRAL: AR 15-04
DATE REFERRED: May 6, 2015
DATE OF NOTIFICATION: May 13, 2015
DATE OF LAST RESPONSE: May 29, 2015
DATE ACTIVATED: June 1, 2015

ELECTION CYCLE: 2010
EXPIRATION OF SOL: July 1, 2013 to
January 22, 2016

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Republican Party of Orange County and Jeffrey
Lalloway in his official capacity as treasurer¹

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)²
52 U.S.C. § 30125(b)
11 C.F.R. § 104.3(d)
11 C.F.R. § 104.11(a), (b)
11 C.F.R. § 300.31(a)
11 C.F.R. § 300.32
11 C.F.R. § 300.33
11 C.F.R. § 300.34(a), (b)

INTERNAL REPORTS CHECKED:

Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a Commission audit of the Republican Party of Orange
County ("RPOC") covering the period of January 1, 2009 through December 31, 2010. The

¹ On May 13, 2015, the Republican Party of Orange County filed an amended Statement of Organization designating Jeffrey Lalloway as its treasurer. Mark W. Bucher was the treasurer during the activity in this matter.

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

Commission approved the Final Audit Report (Attachment 1) on April 24, 2015, and the Audit Division referred the following two findings to the Office of the General Counsel for possible enforcement action: (1) RPOC failed to disclose debts and obligations of \$56,089,³ and (2) RPOC improperly spent \$73,465 on voter registration activities using Levin funds transferred from the California Republican Party ("CRP").⁴ OGC notified RPOC of the Referral, and RPOC filed a response but did not present additional substantive arguments beyond those previously presented and considered by the Commission during the audit process.⁵ Based on the discussion below and the facts, analysis, and findings set forth in the Final Audit Report, which is herein incorporated by reference, we recommend that the Commission make reason to believe findings as follows:

- RPOC violated 52 U.S.C. § 30104(b) by failing to disclose debts and obligations of \$56,089 in its reports, and
- RPOC violated 52 U.S.C. § 30125(b) by improperly spending \$73,465 on federal voter registration activities using Levin funds transferred from the California Republican Party.⁶

Additionally, we recommend that the Commission authorize pre-probable cause conciliation.

³ See Attach. 1 at 9-10. The Audit Division informed us that the Final Audit Report and Audit Referral incorrectly stated that the amount of this violation was \$60,296; the correct amount of the unreported debts and obligations during the audit period is \$56,089.

⁴ *Id.* at 13-16.

⁵ With regard to the finding that RPOC improperly utilized funds that had been transferred into its Levin account, RPOC reiterates that it had accepted the Levin funds at issue from the CRP with the understanding from CRP that the Commission had previously advised CRP that it was permitted to transfer Levin funds to RPOC. RPOC Resp. at 1 (May 28, 2015). RPOC further explains that it found the rule allowing the transfer but prohibiting the use of the funds unusual, but acted in good faith to follow the direction of the Audit staff by disclosing a debt that reflected the amount of the expended Levin funds at issue, even as it contested the issue during the audit process. *Id.* at 1-2. RPOC's Response does not address the audit finding that RPOC failed to disclose debts and obligations.

⁶ See Attach. 1 at 9-16.

II. FACTUAL AND LEGAL ANALYSIS

A. Failure to Disclose Debts and Obligations

The Act and Commission regulations require political committees to disclose the amount and nature of outstanding debts and obligations until those debts are extinguished.⁷ A political committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished.⁸ A debt or obligation of \$500 or less must be reported as of the time that payment is made or within sixty days of the date on which the political committee incurs the debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred.⁹

The Commission found in its audit that RPOC failed to report debts totaling \$56,089 during the 2010 election cycle.¹⁰ In November 2013, RPOC amended its reports to include these debts and obligations.¹¹ Accordingly, we recommend that the Commission find reason to believe that RPOC violated 52 U.S.C. § 30104(b).

B. Improper Use of Levin Funds

The Act generally prohibits State, local, and district committees of political parties from using non-federal funds to pay for Federal election activity.¹² The Act, however, permits a State, local, and district committee of a political party to pay for certain Federal election activities, such

⁷ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

⁸ See 11 C.F.R. § 104.11(a).

⁹ 11 C.F.R. § 104.11(b).

¹⁰ See Attach. 1 at 10.

¹¹ *Id.*

¹² 52 U.S.C. § 30125(b)(1).

1 as voter registration and "get out the vote" activities that do not mention a Federal candidate,
2 with an allocation of both Federal and non-federal funds, which are subject to certain
3 restrictions.¹³ These non-federal funds are referred to as Levin funds.¹⁴

4 The Act and Commission regulations require Levin funds to be raised solely by the State,
5 district, or local political committee that expends or disburses the funds.¹⁵ Therefore, a State,
6 district, or local political committee must not use as Levin funds any funds transferred or
7 otherwise provided to the committee by any State, district, or local political committee or the
8 national committee of any political party.¹⁶

9 During the 2010 election cycle, RPOC made 23 transfers, totaling \$73,465, from its
10 Levin account to its Federal accounts in order to reimburse the Federal accounts for voter
11 registration expenses.¹⁷ The source of funds used to make these transfers was a \$74,132 transfer
12 to RPOC's Levin account from the Levin account of the California Republican Party and thus
13 RPOC used Levin funds that it did not raise itself.¹⁸ The Commission found in its audit that

¹³ 52 U.S.C. § 30125(b)(2). For instance, State, local, and district political committees may pay for the following types of Federal election activity with non-federal "Levin" funds: voter registration activity conducted within 120 days prior to a regularly scheduled Federal election, and voter identification, "get out the vote" activity, and generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot. *Id.*

¹⁴ See 11 C.F.R. § 300.30(b).

¹⁵ 52 U.S.C. § 30125(b)(2)(B)(iv); 11 C.F.R. § 300.31(a). Additionally, Levin funds must comply with State law. See 52 U.S.C. § 30125(b)(2)(B)(iii); 11 C.F.R. §§ 300.31(a)-(d), 300.34. The Act limits individual contributions to Levin funds to \$10,000 per calendar year, unless State law prescribes a lesser amount. 52 U.S.C. § 30125(b)(2)(B)(iii); 11 C.F.R. § 300.31(d).

¹⁶ See 52 U.S.C. § 30125(b)(2)(B)(iv); 11 C.F.R. § 300.34(b). In addition, a State, district, or local political committee must not use any Federal funds transferred to it from or otherwise accepted by it from any other State, district, or local committee as the Federal component of an expenditure or disbursement for qualifying Federal election activity. See 11 C.F.R. § 300.34(a).

¹⁷ See Attach. I at 13. RPOC reported these transfers on Schedule H5 (Transfers of Levin Funds Received for Allocated Federal Election Activity). *Id.*

¹⁸ *Id.*

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these funds were improperly used.¹⁹ Accordingly, we recommend that the Commission find
reason to believe that RPOC violated 52 U.S.C. § 30125(b).

¹⁹ *Id.* at 16.

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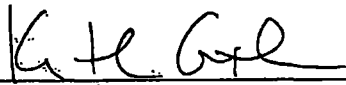
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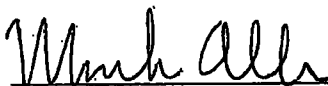
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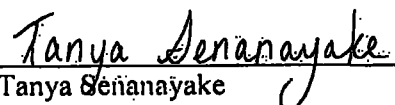
IV. RECOMMENDATIONS

1. Open a MUR in AR 15-04;
2. Find reason to believe that Republican Party of Orange County and Jeffrey Lalloway in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
3. Find reason to believe that Republican Party of Orange County and Jeffrey Lalloway in his official capacity as treasurer violated 52 U.S.C. § 30125(b);
4. Authorize conciliation with Republican Party of Orange County and Jeffrey Lalloway in his official capacity as treasurer prior to a finding of probable cause to believe;
- 5.
6. Approve the attached Factual and Legal Analysis; and
7. Approve the appropriate letter.

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Date


Kathleen Guith
Deputy Associate General Counsel for Enforcement


Mark Allen
Assistant General Counsel


Tanya Senanayake
Attorney

Attachments:

1. Final Report of the Audit Division on Republican Party of Orange County



Final Audit Report of the Commission on the Republican Party of Orange County (Federal) (January 1, 2009 - December 31, 2010)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act¹ (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.² The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

The Republican Party of Orange County (Federal) is a local party committee headquartered in Tustin, California. For more information, see the chart on the Committee organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Individual Contributions	\$ 299,234
○ Political Committee Contributions	81,000
○ Transfers from Affiliates	76,923
○ Transfers from Non-federal Accounts	230,078
○ Transfers from Levin Account	73,466
○ Loans Received	6,205
○ Offsets to Operating Expenditures	3,661
Total Receipts	\$ 770,567
• Disbursements	
○ Operating Expenditures	\$ 613,029
○ Federal Election Activity	149,571
○ Contribution Refunds	8,850
○ Loans Repaid	6,205
Total Disbursements	\$ 777,655
• Levin Receipts	\$ 74,132
• Levin Disbursements	\$ 73,465

Commission Findings (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Debts and Obligations (Finding 2)
- Recordkeeping for Employees (Finding 3)
- Use of Levin Fund Transfers (Finding 4)

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² 52 U.S.C. §30111(b).

Final Audit Report of the Commission on the Republican Party of Orange County (Federal)

(January 1, 2009 – December 31, 2010)



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Part I Background

Authority for Audit

This report is based on an audit of the Republican Party of Orange County (Federal) (RPOC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the completeness of records;
6. the disclosure of independent expenditures; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with RPOC requested early consideration of a legal question raised during an audit. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1), does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. Finding 3, Recordkeeping for Employees, of this audit report does not include RPOC employees paid with 100 percent federal funds and reported as such.

Audit Hearing

RPOC requested a hearing before the Commission. The request was granted and the hearing was held on November 20, 2014. At the hearing, RPOC addressed one issue related to whether RPOC could spend Levin funds received from the California Republican Party (CRP) on federal election activity. (For more detail, see Finding 4, p. 13.)

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Part II Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 6, 1982
• Audit Coverage	January 1, 2009 - December 31, 2010
Headquarters	
Tustin, California	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Four Federal, Two Levin and Eight Non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Mark W. Bucher
• Treasurer During Period Covered by Audit	Mark W. Bucher
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Company

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Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 6,092
Receipts	
o Individual Contributions	299,234
o Political Committee Contributions	81,000
o Transfers from Affiliates	76,923
o Transfers from Non-federal Accounts	230,078
o Transfers from Levin Account	73,466
o Loans Received	6,205
o Offsets to Operating Expenditures	3,661
Total Receipts	\$ 770,567
Disbursements	
o Operating Expenditures	613,029
o Federal Election Activity	149,571
o Contribution Refunds	8,850
o Loans Repaid	6,205
Total Disbursements	\$ 777,655
Cash-on-hand @ December 31, 2010	(\$ 996)³
Levin Cash-on-hand @ January 1, 2009	\$ 10
Total Levin Receipts	\$ 74,132
Total Levin Disbursements	\$ 73,465
Levin Cash-on-hand @ December 31, 2010	\$ 677

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³ RPOC overdraw its bank accounts in the amount of \$996. On January 12, 2011, RPOC's balance was no longer overdrawn.

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Part III Summaries

Commission Findings

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of RPOC's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for calendar year 2009. RPOC understated its receipts by \$17,420 and disbursements by \$17,420. The misstatements were due mainly to unreported transfers to and from non-federal accounts and unreported in-kind contributions. In response to the Interim Audit Report recommendation, RPOC amended its reports to materially correct the misstatements noted above.

The Commission approved a finding that RPOC misstated its financial activity for calendar year 2009. (For more detail, see p. 7.)

Finding 2. Reporting of Debts and Obligations

Audit fieldwork indicated that RPOC failed to report debts and obligations for 12 vendors totaling \$60,296 on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, RPOC amended its reports to materially include these debts and obligations.

The Commission approved a finding that RPOC failed to disclose debts and obligations of \$60,296 in its reports. (For more detail, see p. 9.)

Finding 3. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that RPOC did not maintain monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the amount of payroll for which logs were required was \$187,281. RPOC reported these payroll disbursements as allocated between federal and non-federal funds.

After audit fieldwork, RPOC provided an affidavit that listed the time spent on federal election activities for each of its employees. In response to the Interim Audit Report recommendation, RPOC stated that, for all future payrolls, it will maintain monthly payroll logs and document the percentage of time each employee spends on federal and non-federal election activity.

The Commission approved a finding that RPOC did not maintain monthly payroll logs totaling \$187,281, as required, to document the percentage of time each employee spent on federal election activity. (For more detail, see p. 11.)

Finding 4. Use of Levin Fund Transfers

During audit fieldwork, a review of Levin fund activity determined that RPOC received \$74,132 from the CRP's Levin account for reimbursement of voter registration expenses. RPOC then transferred \$73,465 from its Levin account to its federal accounts, as reimbursement for voter registration expenses. In accordance with 11 CFR §300.31(a), Levin funds expended must be raised solely by the committee that expends them. In response to the Interim Audit Report recommendation, RPOC disclosed \$73,465 on Schedule D of its 2013 November monthly report as a debt to its Levin account. RPOC requested a hearing before the Commission to discuss this matter. (For more detail, see Audit Hearing, p. 16.)

The Commission approved a finding that RPOC improperly spent \$73,465 on voter registration activities using Levin funds transferred from the CRP. (For more detail, see p. 13.)

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Part IV

Commission Findings

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of RPOC's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for calendar year 2009. RPOC understated its receipts by \$17,420 and disbursements by \$17,420. The misstatements were due mainly to unreported transfers to and from non-federal accounts and unreported in-kind contributions. In response to the Interim Audit Report recommendation, RPOC amended its reports to materially correct the misstatements noted above.

The Commission approved a finding that RPOC misstated its financial activity for calendar year 2009.

Legal Standard

A. Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

B. Definition of Contribution. Gift, subscription, loan, advance or deposit of money.

- a gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.
- the term anything of value includes all in-kind contributions.
- the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. 11 CFR §100.52(a) & (d)(1).

Facts and Analysis

A. Facts

During audit fieldwork, a comparison of RPOC's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for calendar year 2009. The following chart details the discrepancies between RPOC's disclosure reports and its bank records. Succeeding paragraphs explain why the discrepancies occurred.

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2009 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash-on-Hand @ January 1, 2009	\$6,092	\$6,092	\$0
Receipts	\$311,572	\$328,992	(\$17,420) Understated
Disbursements	\$303,419	\$320,839	(\$17,420) Understated
Ending Cash-on-Hand @ December 31, 2009	\$14,245	\$14,245	\$0

The understatement of receipts resulted from the following.

• Under reporting of receipts	\$ 10,631
• In-kind contribution, not reported as a receipt	10,000 ⁴
• In-kind rent for December, not reported as a receipt	3,904
• Duplicate reported receipt (in-kind contribution)	(5,000) ⁵
• Unexplained difference	(2,115)
Net Understatement of Receipts	<u>\$ 17,420</u>

The understatement of disbursements resulted from the following.

• In-kind contribution, not reported as a disbursement	\$ 10,000
• Disbursements not reported	9,382
• In-kind rent for December, not reported as a disbursement	3,904
• Disbursements over-reported	(866)
• Duplicate reported disbursement (in-kind contribution)	(5,000)
Net Understatement of Disbursements	<u>\$ 17,420</u>

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided RPOC's treasurer with workpapers detailing the misstatements. The treasurer asked general questions regarding the reporting requirements.

The Interim Audit Report recommended that RPOC amend its disclosure reports to correct the misstatement of its receipts and disbursements for 2009.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RPOC filed amended reports that materially correct the misstatements of financial activity.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that RPOC filed amended reports that materially corrected the misstatement of financial activity.

⁴ This was a partial payment for a fundraising event.

⁵ RPOC originally reported this as a loan and repayment. It was later reported as an in-kind contribution.

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E. Committee Response to the Draft Final Audit Report

RPOC's response to the Draft Final Audit Report provided no additional comments relating to this matter.

F. Audit Hearing

RPOC did not address this finding during the Audit hearing.

Commission Conclusion

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that RPOC misstated its financial activity for calendar year 2009.

The Commission approved the Audit staff's recommendation.

Finding 2. Reporting of Debts and Obligations

Summary

Audit fieldwork indicated that RPOC failed to report debts and obligations for 12 vendors totaling \$60,296 on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, RPOC amended its reports to materially include these debts and obligations.

The Commission approved a finding that RPOC failed to disclose debts and obligations of \$60,296 in its reports.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- Once it has been outstanding 60 days from the date incurred, a debt of \$500 or less must be reported on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

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Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to 12 vendors totaling \$60,296 that RPOC failed to report on Schedule D. Of these debts, \$48,636 was incurred during the audit period and \$11,660 was incurred prior to the audit period and remained outstanding as of the beginning of the audit period. It should be noted that RPOC did disclose debts owed to some of these vendors during the audit period. However, the debt amounts identified by the Audit staff above were not included in the debt amounts reported.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the reporting of debts and obligations with RPOC's treasurer and provided schedules detailing the transactions requiring disclosure. The treasurer had no comments on this matter.

The Interim Audit Report recommended that RPOC amend its disclosure reports to correctly include debts and obligations of \$60,296 on Schedule D.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RPOC amended its reports to materially include these debts and obligations. In addition, RPOC stated that it has tightened procedures for reporting accounts payable. RPOC also added that staff and board members have been informed that all its obligations need to be reported to the treasurer at the time they are incurred.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that RPOC filed amended reports that materially disclosed its debts and obligations.

E. Committee Response to the Draft Final Audit Report

RPOC's response to the Draft Final Audit Report provided no additional comments relating to this matter.

F. Audit Hearing

RPOC did not address this finding during the Audit hearing.

Commission Conclusion

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that RPOC failed to disclose debts and obligations of \$60,296 in its reports.

The Commission approved the Audit staff's recommendation.

Finding 3. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that RPOC did not maintain monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the amount of payroll for which logs were required was \$187,281. RPOC reported these payroll disbursements as allocated between federal and non-federal funds.

After audit fieldwork, RPOC provided an affidavit that listed the time spent on federal election activities for each of its employees. In response to the Interim Audit Report recommendation, RPOC stated that, for all future payrolls, it will maintain monthly payroll logs and document the percentage of time each employee spends on federal and non-federal election activity.

The Commission approved a finding that RPOC did not maintain monthly payroll logs totaling \$187,281, as required, to document the percentage of time each employee spent on federal election activity.

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- Employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- Employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- Employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with State law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed payroll disbursements totaling \$187,281.⁶ RPOC did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. This entire amount (\$187,281) represents payroll disbursements allocated between federal and non-federal funds during the audit period. RPOC had no employees paid exclusively from a non-federal account.

RPOC's staffing consisted of eight individuals all of whom were hired via an employment company. In its reports, RPOC disclosed the purpose of the payroll

⁶ This total does not include payroll for employees paid with 100 percent federal funds (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, page 1).

expenditures as "Leased Employees." In addition, RPOC included a statement in its reports noting that the time spent on federal election activity and federal campaigns was tracked on a monthly basis and no employee spent 25 percent or more of their compensated time on federal election activity. RPOC did not maintain a monthly time log to support its statement above and as required by 11 CFR §106.7(d)(1).

B. Interim Audit Report & Audit Division Recommendation

At the exit conference and during audit fieldwork, the Audit staff discussed the payroll recordkeeping matter with RPOC's treasurer. At the exit conference, the treasurer provided an affidavit from RPOC's chairman that listed the time spent on federal election activities for its employees. This document, however, did not resolve the recordkeeping finding because RPOC provided the affidavit only after being notified of the recordkeeping requirement during the audit.

The Interim Audit Report recommended that, for all future payrolls, RPOC implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RPOC stated that, for all future payrolls, it will maintain monthly payroll logs and document the percentage of time each employee spends on federal and non-federal election activity. RPOC stated that it will document the amount of hours spent on federal and non-federal election activity on a semi-monthly basis in a spreadsheet log.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that RPOC stated that for future payrolls, it will maintain monthly payroll logs and document the percentage of time each employee spends on federal and non-federal activity.

E. Committee Response to the Draft Final Audit Report

RPOC's response to the Draft Final Audit Report provided no additional comments relating to this matter.

F. Audit Hearing

RPOC did not address this finding during the Audit hearing.

Commission Conclusion

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that RPOC did not maintain monthly payroll logs totaling \$187,281, as required, to document the percentage of time each employee spent on federal election activity.

The Commission approved the Audit staff's recommendation.

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Finding 4. Use of Levin Fund Transfers

Summary

During audit fieldwork, a review of Levin fund activity determined that RPOC received \$74,132 from the CRP's Levin account for reimbursement of voter registration expenses. RPOC then transferred \$73,465 from its Levin account to its federal accounts, as reimbursement for voter registration expenses. In accordance with 11 CFR §300.31(a), Levin funds expended must be raised solely by the committee that expends them. In response to the Interim Audit Report recommendation, RPOC disclosed \$73,465 on Schedule D of its 2013 November monthly report as a debt to its Levin account. RPOC requested a hearing before the Commission to discuss this matter.

The Commission approved a finding that RPOC improperly spent \$73,465 on voter registration activities using Levin funds transferred from the CRP.

Legal Standard

A. Expending of Levin Funds. Levin funds expended or disbursed by any State, district or local committee must be raised solely by the committee that expends or disburses them. Consequently, funds from national party committees, other State, district and local committees and Federal candidates or officeholders, may not be accepted as Levin funds. 11 CFR §§300.31(a) and 300.34(b). This includes any entity directly or indirectly established, financed, maintained or controlled by any national, State, district or local committee of a political party. 52 U.S.C. §30125(b)(2)(B)(iv).

B. Levin Fund Transfers. A State, district, or local committee of a political party must not use any Federal funds transferred to it from or otherwise accepted by it from any other State, district, or local committee as the Federal component of an expenditure or disbursement for Federal election activity under 11 CFR §300.32. A State, district, or local committee of a political party must itself raise the Federal component of an expenditure or disbursement allocated between federal funds and Levin funds under 11 CFR §§300.32 and 300.33. 11 CFR §300.34(a).

Levin funds must be raised solely by the State, district, or local committee of a political party that expends or disburses the funds. A State, district, or local committee of a political party must not use as Levin funds any funds transferred or otherwise provided to the committee by any State, district, or local committee of a political party of the national committee of any political party. 11 CFR §300.34(b).

Facts and Analysis

A. Facts

During the audit period, RPOC made 23 transfers, totaling \$73,465, from its Levin account to its federal accounts and reported these transfers on Schedule H5 (Transfers of Levin Funds Received for Allocated Federal Election Activity). All of the Levin funds expended by RPOC⁷ (\$73,465) were received from the CRP's Levin account, which transferred \$74,132 to RPOC's Levin account.

⁷ RPOC had a beginning cash balance of \$10 in its Levin account that was not transferred from CRP. 16 off 19

While there is no prohibition on the CRP transferring Levin funds to local party committees under 11 CFR §102.6, there is a prohibition on local committees using funds transferred by a state party committee for either the federal or Levin shares of disbursements allocated between federal and Levin funds.⁸ As such, RPOC did not meet the requirement that the Levin funds must be raised solely by the committee that expends or disburses the funds.

B. Interim Audit Report & Audit Division Recommendation

At the entrance and exit conferences, the Audit staff discussed this matter with RPOC's treasurer. The treasurer had no comments regarding this matter.

The Interim Audit Report recommended that RPOC demonstrate that it solely raised the expended Levin funds. Absent such demonstration, it was recommended that RPOC refund its Levin account \$73,465 from its federal account and provide evidence of this refund.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RPOC added the Levin fund transfers (\$73,465) to its Schedule D on the 2013 November monthly report, as a debt owed to its Levin account.⁹

However, RPOC contended that the Commission should not accept this finding. RPOC stated that it is a vendor to the CRP and its agent in conducting voter registration activities in Orange County. RPOC noted that it has operated under the CRP's "Operation Bounty" agreement by which RPOC is compensated by the CRP on the basis of valid Republican voter registrations it obtains and which the CRP verifies as valid voter registrations throughout each election cycle. RPOC stated that, for the 2010-2011¹⁰ election cycle, this included registrations obtained outside the Federal Election Activity (FEA), Type II¹¹ period, as well as, registrations obtained during the FEA, Type II period. RPOC stated that it received consideration in the form of payment per valid registration to defray its cost in obtaining, processing, verifying and submitting the voter registrations to the CRP through the Operation Bounty program. RPOC contended that without the Operation Bounty reimbursement, it would be less likely and able to conduct effective voter registrations using the volunteer resources of Republican volunteer organizations, groups and activists. Further, RPOC stated that the Operation Bounty program is a bona fide party building program, which engages Republican volunteer groups and individual Republican activists in voter outreach, voter communication and spreading the Republican identification and brand in the community. It further added that if the CRP was not able to utilize the RPOC as its agent and vendor, the CRP would have

⁸ This matter was addressed in a Request for Commission Directive 69 Guidance involving the Democratic State Central Committee of California (LRA #819) dated April 22, 2011.

⁹ As of February 28, 2015, this amount remains outstanding on Schedule D and the reported cash-on-hand balance is \$7,634.

¹⁰ The audit period was 2009-2010.

¹¹ The Audit staff believes RPOC is actually referring to FEA, Type I. These are voter registration activities conducted by a state or local political party committee within a period starting 120 days before the date of a scheduled federal election and ending on the date of the election. The FEA, Type I periods were 2/08/10 – 6/08/10 for the 2010 CA Primary election and 7/05/10 – 11/02/10 for the 2010 General election.

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to seek alternatives, such as commercial vendors, which do not offer the collateral party building benefits that the RPOC-CRP relationship promotes.

RPOC contested whether this finding should be approved by the Commission on both statutory and constitutional grounds. RPOC stated that it is not prohibited from using non-federal funds transferred by a State, local or district committee of a political party to reimburse its federal account for a portion of expenses for voter registration conducted outside the FEA, Type II period as set forth in Commission regulation 11 CFR §300.32(b)(1)(i). Also, a State, local or district committee of a political party is not prohibited from paying vendors other than another State, local or district committee of a political party using Levin funds for voter registration activity during the FEA, Type II period under 11 CFR §300.32(b)(1)(i).

In conclusion, RPOC stated that the Commission should allow it to accept and use Levin funds obtained in reimbursement through Operation Bounty as a matter of contract and agency law. Alternatively, RPOC also noted that the Commission should not enforce 2 U.S.C. §441i(b)(2)(iv)(I) because it feels such enforcement would violate the equal protection clause of the Fourteenth Amendment to the United States Constitution. RPOC believed this would discriminate against a political party and its members for engaging in voter registration political activity using Levin funds received in connection with its contract with the CRP. RPOC further added that such a decision would not apply to other vendors that contract to engage in voter registration activity payable with Levin funds.

RPOC stated that guidance provided by the Commission's Reports Analysis Division and the CRP Final Audit Report of the Commission both confirm payments to local committees for voter registration activities were within the statute and the regulations. The Audit staff does not dispute this fact. CRP transferred Levin funds to RPOC, which is not prohibited by the Act. However, RPOC used the transferred funds for Type I FEA - voter registration activities, which is not permitted under 11 CFR §300.31(a). This is the distinction between the activities performed by these two committees.

Based on the above, the Audit staff considered that RPOC improperly spent \$73,465 on Type I FEA - voter registration activities using Levin funds transferred from the CRP.

D. Draft Final Audit Report

The Draft Final Audit Report noted that RPOC improperly spent \$73,465 on voter registration activities using Levin funds transferred from the CRP.

E. Committee Response to the Draft Final Audit Report

RPOC responded to the Draft Final Audit Report by requesting a hearing on this matter. RPOC stated that:

1. There was no evidence of circumvention by any donor to RPOC of the \$10,000 Levin Fund limits.
2. RPOC provided Republican voter registration to the CRP for "fair consideration" pursuant to the Operation Bounty voter registration agreement and found it "anomalous" that a state party committee would be permitted to transfer Levin funds to a subordinate party committee with the subordinate party committee precluded from using the Levin funds for "Levin" purposes.

3. RPOC understood that the CRP had obtained informal authorization to make the payments in question to RPOC. RPOC believed the transfers were permissible, and, in response to requests for additional information from the Commission, RPOC responded with FEC Form 99 submissions and does not recall further response from the Commission.

F. Audit Hearing

During the Audit hearing, RPOC reiterated its position that it acted as an agent to the CRP by engaging in local voter registration activities through the Operation Bounty Program. RPOC stated that it did not perform the voter registration services as a mechanism to raise money for its other political activities or as an effort to circumvent an applicable contribution limit. Further, RPOC contended that the CRP was given FEC approval to make the transfers to local parties for voter registration services. With regard to its claim of a violation of the equal protection clause, RPOC stated that the Commission had responded appropriately in this context. In closing, RPOC stated that the final audit report should not contain Finding 4.

The Audit staff maintains that the Act and Commission's regulations prohibit the use of Levin funds received from another state or local party for federal election activity. As a local party committee, RPOC is subject to those regulations with respect to the \$73,465 transferred from the CRP and used for voter registration activities.

Commission Conclusion

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that RPOC improperly spent \$73,465 on voter registration activities using Levin funds transferred from the CRP.

The Commission approved the Audit staff's recommendation.